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| 10/002,265 | 11/02/2001 | Art Shelest | M1103.70084US00 | 2501 |

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| EXAMINER | |
|---|---|
| DENNISON, JERRY B | |

| ART UNIT | PAPER NUMBER |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/002,265 | SHELEST ET AL. | |
| | Examiner | Art Unit | |
| | J. Bret Dennison | 2143 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *31 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) *1-4, 10-13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5-9, 14-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

1. This Action is in response to the Election for Application Number 10/002,265 received on 1/31/2007.

2. Claims 5-9 and 14-18 are presented for examination.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 5, 9, 14 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Biederman (US 7,006,526, hereinafter Biederman).

5. As per claim 5, Biederman teaches a method to negotiate an option in a computer environment (e.g. col. 5, lines 58-65; col. 6, lines 34-43) comprising the steps of:

predicting if the option will be needed (e.g. col. 2, lines 64-67; col. 3, lines 1-4);

if the option is predicted to be needed, predicting if the option will need a value outside of a normal range of values (e.g. col. 8, lines 50-67; col. 9, lines 1-7):

if the option is predicted to need the value outside of the normal range of values:

determining an outside setting to use that is outside of the normal range of values (e.g. col. 6, lines 49-58; col. 8, lines 50-67; col. 9, lines 1-7);

setting the value to the outside setting (e.g. col. 6, lines 49-58; col. 8, lines 50-67; col. 9, lines 1-7);

if the option is not predicted to need the value outside of the normal range of values:

setting the value to a normal setting within the normal range of values (e.g. col. 6, lines 49-58; col. 8, lines 50-67; col. 9, lines 1-7).

6. As per claim 9, Biederman teaches the method of claim 5 wherein the option is a window scaling factor and wherein the step of setting the value to an outside value includes setting the window scaling factor to a value of 256 (e.g. col. 2, lines 64-67; col. 3, lines 1-4, 17-22; col. 9, lines 12-19).

7. As per claim 14, Biederman teaches a computer readable medium having computer executable instructions for negotiating an option in a computer environment (e.g. col. 5, lines 58-65; col. 6, lines 34-43), the computer executable instructions performing the steps comprising:

predicting if the option will be needed (e.g. col. 2, lines 64-67; col. 3, lines 1-4);

if the option is predicted to be needed:

predicting if the option will need a value outside of a normal range of values (e.g. col. 8, lines 50-67; col. 9, lines 1-7):

if the option is predicted to need the value outside of the normal range of values:

determining an outside setting to use that is outside of the normal range of values (e.g. col. 6, lines 49-58; col. 8, lines 50-67; col. 9, lines 1-7);

setting the value to the outside setting (e.g. col. 6, lines 49-58; col. 8, lines 50-67; col. 9, lines 1-7);

if the option is not predicted to need the value outside of the normal range of values:

setting the value to a normal setting within the normal range of values (e.g. col. 6, lines 49-58; col. 8, lines 50-67; col. 9, lines 1-7).

8. As per claim 18, Biederman teaches the computer-readable medium of claim 14 wherein the option is a window scaling factor and wherein the computer-executable instructions for performing the step of setting the value to an outside value includes computer-executable instructions for setting the window scaling factor to a value of 256 (e.g. col. 2, lines 64-67; col. 3, lines 1-4, 17-22; col. 9, lines 12-19).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 6-8 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biederman (US 7,006,526, hereinafter Biederman) in view of Dandalis et al. "An Adaptive Cryptographic Engine for IPSec Architectures" (hereinafter Dandalis).

11. As per claim 6, Biederman teaches the method of claim 5, including processors to provide security functions, but fails to specifically teach the method wherein the option is an Internet security encryption option, and wherein the step of setting the value to a normal setting includes setting an encryption key size to one of 40 bit, 128 bit, 192 bit and 256 bit.

However, in a similar art, Dandalis teaches an IP network cryptography system that includes the setting of an encryption key size to one of 128 bit, 192 bit and 256 bit (e.g. Dandalis, Abstract; section 4.1, pages 136-137).

It would have been obvious to one skilled in the art at the time the invention was made to combine Dandalis with Biederman because of the advantages of using Internet security encryption keys of standard size. As Dandalis states, "the need for securing the Internet has become a fundamental issue, especially for transmitting confidential data" (e.g. Dandalis, section 1, page 132). The Internet itself is unprotected, which leaves the users with the burden of securing their own communications. The use of IPSec and the Advanced Encryption Standard (AES) is well known in the art for providing secure communications between parties communicating using the Internet. These both provide fast, efficient and safe methods of encrypting network communication, which is beneficial, and almost a necessity, in any computer network.

12. As per claim 7, Biederman and Dandalis teach the method of claim 6 wherein the step of setting an encryption bit size to the one of 40 bit, 128 bit, 192 bit and 256 bit includes the steps of predicting a highest value that will be needed and setting the encryption key size to the highest value (e.g. Biederman, col. 8, lines 50-61).

13. As per claim 8, Biederman and Dandalis teach the method of claim 6 wherein the method includes negotiating IPSec protocol options (e.g. Dandalis, Abstract; section 1, pages 132-133).

14. As per claim 15, Biederman teaches the computer-readable medium of claim 14, including processors to provide security functions, but fails to specifically teach the medium wherein the option is an internet security encryption option, and wherein the computer-readable medium has further computer-executable instructions for performing the step of setting an encryption key size to one of 128 bit, 192 bit and 256 bit.

However, in a similar art, Dandalis teaches an IP network cryptography system that includes the setting of an encryption key size to one of 128 bit, 192 bit and 256 bit (e.g. Dandalis, Abstract; section 4.1, pages 136-137).

It would have been obvious to one skilled in the art at the time the invention was made to combine Dandalis with Biederman for similar reasons as stated above in regards to claim 6.

15. As per claim 16, Biederman and Dandalis teach the computer-readable medium of claim 15 having further computer-executable instructions for performing the steps of predicting a highest value that will be needed and setting the encryption key size to the highest value (e.g. Biederman, col. 8, lines 50-61).

16. As per claim 17, Biederman and Dandalis teach the computer-readable medium of claim 15 having further computer-executable instructions for performing the steps including negotiating IPSec protocol options (e.g. Dandalis, Abstract; section 1, pages 132-133).

**Response to Amendment**

Applicant's arguments and amendments filed on 29 September 2006 have been carefully considered but they are not deemed fully persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Regarding claim 5, Applicant's asserts, "Nowhere does Biederman teach or suggest determining an outside setting to use that he is outside the normal range of values and setting the value to the outside setting if the option will need a value outside of a normal range of values" [see Applicant's Response, page 6, last paragraph].

Regarding claim 14, Applicant asserts, "Nowhere does Biederman teach or suggest predicting if the option will need a value outside a normal range of values, if the option is predicted to need the value outside of the normal range of values, then determining an outside setting to use that is outside the normal range of values and setting the value to the outside setting" [see Applicant's Response, page 7, last paragraph].

Examiner respectfully disagrees.

The examiner would not have set forth the rejections if it was not felt that Biederman teaches the claim language, so merely alleging that Biederman does not

teach the applicant's broad claim language is futile and does nothing to further the prosecution of this application.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

## *Conclusion*

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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